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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

C. G.,

Plaintiff and Appellant,

v.

D. S.,

Defendant and Respondent.

B291029

(Los Angeles County  
Super. Ct. No. 18PSRO00323)

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C. G.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS  
ANGELES COUNTY,

Respondent;

D. S.,

Real Party in Interest.

B291030

(Los Angeles County  
Super. Ct. No. 18PSPT00192)

APPEAL from an order, consolidated with a purported  
appeal from another order, of the Superior Court of Los Angeles

County, Wesley L. Hsu, Judge. Purported appeal treated as petition for writ of mandate. Order affirmed and petition denied.

C. G., in pro. per., for Plaintiff, Appellant and Petitioner.

No appearance on behalf of Defendant, Respondent and Real Party in Interest D. S.

No appearance for Respondent Superior Court.

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C. G. (mother), in propria persona, appeals an order denying her request for a restraining order against D. S. (father). Mother also purports to appeal an order granting father limited visitation with the minor child for three hours on Sunday afternoons.<sup>1</sup>

We perceive no abuse of discretion in either ruling and uphold both orders.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On March 5, 2018, mother filed an ex parte request for a domestic violence restraining order against father (Super. Ct. No. 18PSRO00323), alleging she needed to protect herself and their 14-year old daughter (the minor). Mother's declaration stated that father recently had been released from prison after serving a five-year term, and she was in "fear for our life" and afraid that father would attempt a child abduction. The trial court issued a temporary restraining order and the matter was set for hearing.

On March 16, 2018, father filed a petition to establish parental relationship (Super. Ct. No. 18PSPT00192) and a

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<sup>1</sup> As discussed *infra*, the custody/visitation order is not appealable. However, rather than dismiss that portion of the appeal, we deem it to be a petition for writ of mandate and thus resolve the entire matter on the merits.

request for an order (RFO), seeking to modify a July 8, 2009 order relating to visitation (parenting time). Father's declaration stated that after he was sentenced to six years in prison in 2012 for a financial crime, his custodial time with the minor was stayed and custody was modified to grant mother sole legal and physical custody. Father currently was living in a transition house and was planning to move into his mother's residence in Whittier at month's end. He stated he wished to resume visitation with the minor, with visits to be monitored by the minor's maternal grandmother.

Mother's response to the petition to establish parental relationship admitted father's parentage, but objected to the grant of any visitation due to father's lengthy criminal history.

The hearing on mother's request for a restraining order was continued to June 6, 2018, and was heard concurrently with father's request for an award of visitation. Both parties were present in court, along with Attorney Ramon Cervantes, who was appointed to represent the minor.

The court first heard testimony and argument concerning mother's request for a restraining order. Mother asserted that father is dangerous because of his long criminal history, including convictions for domestic violence in 2004 and 2007, but the trial court considered and rejected her assertions of danger. The court noted there had been substantial periods since the last act of domestic abuse occurred in 2007 during which time father was not incarcerated and mother did not then seek a restraining order. Mother initially testified she did not see father at all between 2007 and March 8, 2018, when he showed up at her home. She then admitted to having had contact with him over the years, causing the court to question her credibility. When

asked by the court why it would be appropriate to enter a restraining order under the circumstances, mother stated “[b]ecause I fear for my life when he’s present and outside of federal prison.”

The trial court ruled that mother had “failed to carry her burden of proof by a preponderance of the evidence that an act of domestic abuse has occurred since 2007,” and it found the “major motivation” for her seeking a restraining order was to keep father out of the minor’s life. The trial court stated: “I don’t think . . . it serves the purpose of the statute for which it was passed to grant your restraining order now. Significant time has passed since the incident. There have been no further incidents of domestic violence. There was a period before he went into custody, into federal custody where he was out and about and apparently there were contacts that you didn’t remember before and now you remember.”

The court then turned to the issue of father’s request for visitation.

Father testified he maintained contact with the minor during the times he was out of prison and stated he had an “ample amount of photos to show the court I’ve been involved in my daughter’s life.” He also testified that he had two years of phone records to show he had been in contact with the minor once or twice a week while incarcerated. Now that father was out of prison, he wished to be back in the minor’s life.

Mother objected to visitation due to father’s criminal record and her fear of him. Mother stated that the minor had written two letters stating she did not want any contact with father. The court disallowed the proffered letters as hearsay.

The court asked minor's counsel whether the minor wished to testify, and counsel stated that the minor did not want to do so. Counsel stated: "This is the whole problem with the contact between my client and her father is she's been instilled with all this fear . . . but she knows her father. She knows who he is. She's had contact with him. Before he went to prison last time there was regular visitation scheduled. . . . [¶] So I mean, you know, [mother's] fears [of] his extensive record should not prevent him from having contact. I'm not saying joint legal, joint physical custody because that's not realistic. [¶] . . . [¶] But at least we can start him off on two-day visits a week just to start getting used to being with his daughter again and, . . . allow him regular communication. She's 14. She can choose if she wants to accept his phone call or not accept his phone call. You know, it's very simple. It's not that difficult."

The court inquired whether counsel had specifically asked the minor if she wanted visitation. Counsel replied that what she told him was confidential "and she's afraid of any repercussion for disclosing any information."

The trial court ruled: "I'm going to order visitation for father but we're going to start really small." The court asked mother if there was anyone she trusted to monitor the visitation. Mother stated: "No, we all fear for our life." The court then cautioned mother "the more unreasonable that I think that you're behaving, the more that I'm going to ignore your position." The court decided against a child interview because it would have put the minor "in the cross hairs because [she would have] to testify against one [parent] or the other."

Minor's counsel proposed that the court commence with modest visitation, "let it go for a few months and [father] can file

a new RFO, [after] establish[ing] more contact. He'll have more evidence [that the visits] are going well and then we can revisit on that basis."

The trial court then ruled that father would have visitation for three hours on Sunday afternoons, stating to mother: "You are clearly unable to allow him to have any time with her and so I'm going to have to do that in this case because I do find that it's in the best interest of the child for him to have some contact[.]"

On June 6, 2018, the trial court issued written orders in both matters. It denied mother's request for a permanent restraining order, finding "no basis" for such an order, and dissolved the existing temporary restraining order. On father's RFO, he was awarded visitation on Sundays from 3:00 p.m. to 6:00 p.m., with visitation to occur in a public place, exchanges of the minor to take place at the City of Industry Sheriff's Department, and with the further requirement that father accommodate the minor's softball schedule.

In the succeeding days, mother repeatedly tried to relitigate the matter. She told the bailiff she would return every single day until her request for a restraining order was granted.

On June 8, 2018, in denying another request by mother for a restraining order, the trial court ruled that no evidence of any danger to the minor had been presented at the hearing, that mother's testimony lacked credibility, and the court had already found that mother's fear was unreasonable. The trial court also noted that mother was motivated by her desire that father not be a parent to the minor, that only minimal visitation was granted and that visitation was to occur in a public setting.

On June 12, 2018, on another ex parte request by mother, the trial court noted "[t]his is [mother's] third filing on the precise

matter that was denied last [week], . . . after a hearing on the merits.” The court admonished mother that if she “keeps filing Requests for Orders without new facts, the Court may find [her] a vexatious litigant, and all further filings will need to be approved by the supervising Judge.” The trial court reiterated that mother’s “fear of [father] is unreasonable,” noting that the “last contact from him that was problematic was before his June 2007 conviction.”

On June 14, 2018, mother filed a notice of appeal from the June 6, 2018 order granting visitation to father. On June 15, 2018, mother filed a notice of appeal from the June 6, 2018 order denying her request for a restraining order. We consolidated the two appeals for purposes of oral argument and decision.

### **CONTENTIONS**

Mother contends in substance that due to father’s criminal history, the trial court should have granted her request for a permanent restraining order against father and should have denied father’s request for visitation.

### **DISCUSSION**

#### *1. Appealability*

The June 6, 2018 order denying mother’s request for a restraining order is appealable. (Code Civ. Proc., § 904.1, subd. (a)(6); *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 187.)

However, no appeal lies from the June 6, 2018 visitation order. The visitation order that was entered in father’s proceeding to establish parental relationship is merely an interlocutory order, as a final judgment had not been entered on father’s petition to establish parental relationship, and therefore the visitation order is not appealable. (*Smith v. Smith* (2012) 208 Cal.App.4th 1074, 1090; Eisenberg, Cal. Prac. Guide: Civil

Appeals & Writs (The Rutter Group 2018) § 2:260.23, p. 2-160 [no appeal lies from temporary child custody/visitation orders].)

However, rather than dismiss the purported appeal from the visitation order, we exercise our discretion to treat it as a petition for writ of mandate, as the matter has been fully briefed, the controversy is ongoing, and a decision on the merits will help provide guidance to the parties going forward. (*City of Los Angeles v. Superior Court* (2015) 234 Cal.App.4th 275, 280-281.)

2. *Trial court acted within its discretion in denying mother's request for a restraining order.*

Here, as a co-parent of the minor, mother sought a restraining order against father pursuant to the Domestic Violence Prevention Act (DVPA) (Fam. Code § 6200 et. seq.),<sup>2</sup> which “permits the trial court to issue a protective order ‘to restrain any person for the purpose’ of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved; the petitioner must present ‘reasonable proof of a past act or acts of abuse.’ (§ 6300.) The abuse that provides a basis for the findings includes bodily injury (§ 6203, subd. (a)(1)); reasonable apprehension of serious bodily injury (§ 6203, subd. (a)(3)); and ‘behavior that has been or could be enjoined pursuant to Section 6320.’ (§ 6203 subd. (a)(4)). Section 6320 in turn permits enjoining ‘molesting, attacking, striking, stalking, threatening, sexually assaulting, battering[,] . . . harassing, telephoning[,] . . . contacting, either directly or indirectly, by mail or otherwise . . . [or] disturbing the peace of the other party.’ (*Id.*, subd. (a).) As a result, abuse under the DVPA includes physical abuse or injury, as well as acts that ‘destroy[ ] the

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<sup>2</sup> All further statutory references are to the Family Code, unless otherwise specified.

mental or emotional calm of the other party.’ [Citation.]”  
(*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 820.)

We review the trial court’s decision with respect to the issuance of a restraining order under the DVPA for an abuse of discretion. (*Isidora M. v. Silvino M.* (2015) 239 Cal.App.4th 11, 16.) Our inquiry is “ ‘ “whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted” ’ ” (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143), supporting the trial court’s decision denying injunctive relief.

Here, mother makes no attempt in her opening brief to establish that the trial court abused its discretion in denying her request for a restraining order. Instead, she simply argues at length that based on father’s criminal record, the trial court was required to rule in her favor.

In so doing, mother is essentially requesting that we reweigh the facts and reach different conclusions than did the trial court. However, an appeal is not a second trial, and our role as an appellate court is simply to determine whether the trial court abused its discretion in denying relief to mother. In performing this review, we cannot reweigh the evidence, redetermine questions of credibility, or substitute our judgment for that of the trial court. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; *In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682; *Schneer v. Llauro* (2015) 242 Cal.App.4th 1276, 1285-1286.)

As set forth above, the evidence showed the last act of domestic violence occurred in 2007, and that there had been significant periods of time since then when father was not in prison and no domestic violence occurred. Further, although mother asserted she feared for her life and the life of her

daughter, the trial court found mother was not credible with respect to the extent of her contact with father over the years, and that mother's fear was unreasonable. (§ 6203, subd. (a)(3) [defining abuse as "reasonable apprehension of imminent serious bodily injury"].) The trial court also found that the "major motivation" for mother's request for a restraining order was to exclude father from the minor's life.

As indicated, it is not this court's role to substitute our decision for that of the trial court. We conclude that on the record presented, the trial court acted within the bounds of its discretion in declining mother's request for a restraining order.

3. *No abuse of discretion in visitation order.*

"The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test.'" (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255 (*Montenegro*)). Generally, a trial court abuses its discretion if there is no reasonable basis on which the trial court could conclude its decision advanced the best interests of the child. (*In re Marriage of Melville* (2004) 122 Cal.App.4th 601, 610.) "Under this test, we must uphold the trial court 'ruling if it is correct on any basis, regardless of whether such basis was actually invoked.'" (*Montenegro*, at p. 255.)

A " "showing on appeal is wholly insufficient if it presents a state of facts, a consideration of which, for the purpose of judicial action, merely affords an opportunity for a difference of opinion. An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge. To be entitled to relief on appeal from the result of an alleged abuse of discretion it must clearly appear that the injury resulting from such a wrong is sufficiently grave to amount to a

manifest miscarriage of justice . . . .” [Citation.]’ [Citation.]”  
(*Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 299.)

In granting father three hours of visitation on Sunday afternoons, the trial court ruled that “it’s in the best interest of the child for [father] to have some contact” with the minor. The trial court specifically found that visitation was not precluded by section 3044, which creates a rebuttable presumption that an award of custody to a person who has perpetrated domestic violence within the previous five years is detrimental to the best interests of the child. (*Id.*, at subd. (a).)

Mother contends the trial court’s order granting father three hours of visitation per week is not in the minor’s best interests, and that given father’s criminal history, the trial court should have entered an order denying him *any* visitation with the minor.

However, mother’s mere disagreement with the trial court’s ruling is insufficient to establish an abuse of discretion. Further, the evidence showed that the most recent act of domestic violence against mother occurred in 2007, which was eleven years earlier, and there was no evidence that father had ever threatened the minor or perpetrated any violence against her. Further, the minor had had regular contact with father in the past, and minor’s counsel was fully supportive of father’s request for visitation. Given these circumstances, we perceive no abuse of discretion in the trial court’s decision granting father limited visitation of three hours per week.

### **DISPOSITION**

The June 6, 2018 order denying mother's request for a restraining order is affirmed. Mother's petition for a writ of mandate to set aside the June 6, 2018 order granting father visitation with the minor on Sundays from 3:00 p.m. to 6:00 p.m. is denied. Mother shall bear her own costs.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.